

**FITZGERALD
MONROE
FLYNN**

June 13, 2025

VIA ECF

Honorable Arun Subramanian
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15A
New York, NY 10007

Re: *Zinger v. Bai Brands, LLC*, Case No. 24-cv-3993
Application for Permission to Rebut Defendant's Proprietary Survey

Dear Judge Subramanian:

Pursuant to Paragraph 5(c) of the Court's Civil Case Management Plan and Scheduling Order (Dkt. No. 26), Plaintiff respectfully submits this letter-application to request leave for her damages expert, Dr. J. Michael Dennis, to offer testimony beyond that which Dr. Dennis previously disclosed "in respect of [Plaintiff's] claim[s]," *see id.*

Specifically, on June 5, 2025, Defendant Bai Brands LLC disclosed the testimony of Dr. Itamar Simonson, which included portions "in opposition to [Plaintiff's] claim[s]," *id.* Those portions described a proprietary survey Dr. Simonson designed and implemented purporting to test the materiality and value of the challenged "No Artificial Sweeteners" claim, as well as the hegemony of Bai Water purchasers.

Dr. Dennis is a survey expert and, on behalf of Plaintiff, designed and implemented a survey in this case to test the value of the challenged labeling claim. Plaintiff seeks leave for Dr. Dennis to apply his expertise to rebut Dr. Simonson's proprietary survey and related conclusions, and to offer such testimony at deposition, trial, or otherwise.

Respectfully submitted,



Trevor Flynn
Counsel for Plaintiff

As defendants note in their response, plaintiff's request was made only two business days before Dr. Dennis's scheduled deposition. The discovery cutoff in this case is June 27, 2025, and plaintiff has long been aware that defendant was likely to retain its own survey expert. So plaintiff's expansive request is denied, but the parties should meet and confer in good faith to see if they can reach a reasonable accommodation that allows Dr. Dennis to respond in some way to Dr. Simonson's survey. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 64.

SO ORDERED.



Arun Subramanian, U.S.D.J.
Date: June 20, 2025